



Finance (No. 2) Act 1992

1992 CHAPTER 48

PART II

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER I

GENERAL

Double taxation relief

50 Transfer of a non-UK trade

The following section shall be inserted after section 815 of the Taxes Act 1988—

“815A Transfer of a non-UK trade

- (1) This section applies where section 269C of the 1970 Act or section 140C of the Taxation of Chargeable Gains Act 1992 applies; and references in this section to company A, the transfer and the trade shall be construed accordingly.
- (2) Where company A produces to the inspector an appropriate certificate given by the tax authorities of the relevant member State, this Part, including any arrangements having effect by virtue of section 788, shall apply as if the amount stated in the certificate in accordance with subsection (4)(b) below were tax payable under the law of the relevant member State.
- (3) In any case where—
 - (a) company A is unable to obtain an appropriate certificate from the tax authorities of the relevant member State,
 - (b) the Board is satisfied that this is the case, and

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- (c) company A makes a claim to the Board under this subsection and provides the Board with such information and documents in connection with the claim as the Board may require,

the Board shall determine the amount which in their opinion is the amount of tax computed on the required basis which would have been payable under the law of the relevant member State in respect of the gains accruing to company A on the transfer but for the Mergers Directive; and this Part, including any arrangements having effect by virtue of section 788, shall apply as if the amount so determined were tax payable under the law of the relevant member State.

- (4) For the purposes of this section, an appropriate certificate is one containing—
- (a) a statement to the effect that gains accruing to company A on the transfer would have been chargeable to tax under the law of the relevant member State but for the Mergers Directive;
 - (b) a statement of the amount of tax which would have been payable under that law in respect of the gains so accruing but for that Directive; and
 - (c) a statement to the effect that that amount has been computed on the required basis.
- (5) For the purposes of this section, the required basis is that—
- (a) so far as permitted under the law of the relevant member State, any losses arising on the transfer are set against any gains so arising, and
 - (b) any relief available to company A under that law has been duly claimed.
- (6) In this section—

“the Mergers Directive” means the Directive of the Council of the European Communities dated 23rd July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different member States (no. 90/434/EEC);

“relevant member State” means the member State in which, immediately before the time of the transfer, company A carried on the trade through a branch or agency.”

51 The Arbitration Convention

- (1) The following section shall be inserted after section 815A of the Taxes Act 1988—

“815B The Arbitration Convention

- (1) Subsection (2) below applies if the Arbitration Convention requires the Board to give effect to—
- (a) an agreement or decision, made under the Convention by the Board (or their authorised representative) and any other competent authority, on the elimination of double taxation, or
 - (b) an opinion, delivered by an advisory commission set up under the Convention, on the elimination of double taxation.
- (2) The Board shall give effect to the agreement, decision or opinion notwithstanding anything in any enactment; and any such adjustment as is

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appropriate in consequence may be made (whether by way of discharge or repayment of tax, the making of an assessment or otherwise).

- (3) Any enactment which limits the time within which claims for relief under any provision of the Tax Acts may be made shall not apply to a claim made in pursuance of an agreement, decision or opinion falling within subsection (1) (a) or (b) above.
 - (4) In this section “the Arbitration Convention” means the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, concluded on 23rd July 1990 by the parties to the treaty establishing the European Economic Community (90/436/EEC).”
- (2) In section 816 of the Taxes Act 1988 (disclosure of information) the following subsection shall be inserted after subsection (2)—
- “(2A) The obligation as to secrecy imposed by any enactment shall not prevent the Board, or any authorised officer of the Board, from disclosing information required to be disclosed under the Arbitration Convention in pursuance of a request made by an advisory commission set up under that Convention; and “the Arbitration Convention” here has the meaning given by section 815B(4).”
- (3) The following section shall be inserted after section 182 of the Finance Act 1989 (disclosure of information)—

“182A Double taxation: disclosure of information

- (1) A person who discloses any information acquired by him in the exercise of his functions as a member of an advisory commission set up under the Arbitration Convention is guilty of an offence.
- (2) Subsection (1) above does not apply to any disclosure of information—
 - (a) with the consent of the person who supplied the information to the commission, or
 - (b) which has been lawfully made available to the public before the disclosure is made.
- (3) It is a defence for a person charged with an offence under this section to prove that at the time of the alleged offence he believed that the information in question had been lawfully made available to the public before the disclosure was made and had no reasonable cause to believe otherwise.
- (4) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both;
 - (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.
- (5) No prosecution for an offence under this section shall be instituted in England and Wales or in Northern Ireland except—
 - (a) by the Board, or
 - (b) by or with the consent of the Director of Public Prosecutions or, in Northern Ireland, the Director of Public Prosecutions for Northern Ireland.

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(6) In this section—

“the Arbitration Convention” has the meaning given by section 815B(4) of the Taxes Act 1988;

“the Board” means the Commissioners of Inland Revenue.”

52 Interest

(1) In the Taxes Act 1988 the following section shall be inserted after section 808—

“808A Interest: special relationship

(1) Subsection (2) below applies where any arrangements having effect by virtue of section 788—

- (a) make provision, whether for relief or otherwise, in relation to interest (as defined in the arrangements), and
- (b) make provision (the special relationship provision) that where owing to a special relationship the amount of the interest paid exceeds the amount which would have been paid in the absence of the relationship, the provision mentioned in paragraph (a) above shall apply only to the last-mentioned amount.

(2) The special relationship provision shall be construed as requiring account to be taken of all factors, including—

- (a) the question whether the loan would have been made at all in the absence of the relationship,
- (b) the amount which the loan would have been in the absence of the relationship, and
- (c) the rate of interest and other terms which would have been agreed in the absence of the relationship.

(3) The special relationship provision shall be construed as requiring the taxpayer to show that there is no special relationship or (as the case may be) to show the amount of interest which would have been paid in the absence of the special relationship.

(4) In a case where—

- (a) a company makes a loan to another company with which it has a special relationship, and
- (b) it is not part of the first company’s business to make loans generally, the fact that it is not part of the first company’s business to make loans generally shall be disregarded in construing subsection (2) above.

(5) Subsection (2) above does not apply where the special relationship provision expressly requires regard to be had to the debt on which the interest is paid in determining the excess interest (and accordingly expressly limits the factors to be taken into account).”

(2) This section shall apply in relation to interest (as defined in the arrangements) paid after 14th May 1992.